

## **MINUTES OF JULY 7, 2014**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 7, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mrs. Melissa Butler – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for May 19, 2014 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### **PUBLIC HEARINGS**

**Case No. 11413 – Cheryl M. McDermott & Eileen R. Welsh** – north of Route 54 (Lighthouse Road) and being southeast of Blue Teal Road 0.35 mile north of Swann Drive and being Lot 45-B in Swann Keys Subdivision. (911 Address: 37078 Blue Teal Road, Selbyville, Delaware) (Tax Map I.D. 5-33-12.16-472.00)

An application for a variance from the side yard setback requirement.

Mrs. Butler presented the case. Eileen Welsh and Cheryl McDermott were sworn in and testified requesting a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing second floor set of steps. Ms. Welsh testified that there is a deck on top of the existing carport and that the stairs leading to the deck encroach into the side yard setback area; that their builder obtained the building permit; that the lot is only forty (40) feet wide; that the existing manufactured home is only twenty (20) feet wide; that the size of the manufactured home was designed to keep from needing any variances; that they were unaware of the need for the variance and would have applied for a variance prior to construction had they been aware of the need; that the second floor steps do not encroach any further than the steps that give access to the manufactured home; that the adjacent lot is vacant and has an existing wetland area; that the steps would not have a negative effect on adjacent property; that the Applicants maintain the adjacent lot even though they do not own it; that the owners of the lot have no plans to build on the adjacent lot; that other homes in the neighborhood have similar steps; that the variance will enable reasonable use of the Property; that the variance will not alter the character of the neighborhood; that the steps were not built on the opposite side in order to leave room to add on to the existing carport in the future; that the difficulty was not created by the Applicants; that the use is not detrimental to the public welfare; that the variance is the least modification possible the regulation

at issue; and that the variance is the minimum variance to afford relief. The Applicants submitted pictures for the Board to review.

Ms. McDermott testified that the Applicants were unaware of the encroachment until the final inspection by the Sussex County Zoning Inspector; that the Applicants were told that the final blueprints were approved but did not realize that the blueprints did not include the second floor steps; and that the Applicants relied on their builder to build in compliance with the Sussex County Zoning Code.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11413 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is only forty (40) wide;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. Other similar variances have been granted in the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated and directed that Counsel send a letter to the contractor**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11414 – A & A Farms, Inc.** – northwest of Road 525 (Coverdale Road) 1.1 mile southwest of Route 18 (Seashore Highway). (911 Address: None Available) (Tax Map I.D. 4-30-23.00-82.02)

An application for a special use exception for a concrete batch plant.

Mrs. Butler presented the case. Edward Kaye was sworn in and testified requesting a special use exception for a concrete batching plant; that the Board previously granted approval in 2009 for the concrete batch plant on the Property; that the Applicant wishes to extend that approval for five (5) years; that the plant has been in operation for four (4) years as it took approximately one (1) year to construct the facility; that there have been no changes made to the operation of the plant since approval; that there is an existing berm surrounding the plant; that the Property is adjacent to farmland and Coverdale Crossroads; that there have not been any complaints from the neighbors since 2009; that the buildings on the Property are the batch plant, a storage building, and a sand plant that is not operational at this time; and that the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11414 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11415 – Delmarva Broadcasting Company** – northwest of Road 626 (Appel's Road) 0.6 mile northwest of Road 594 (Webb Farm Road). (911 Address: 9078 Appel's Road, Lincoln, Delaware) (Tax Map I.D. 1-30-8.00-36.05)

An application for a variance from the height requirement for a radio / television tower.

Mrs. Butler presented the case. Mike Kazala, Christopher Wilk, and Paul Dugan were sworn in and testified requesting a variance of 175 feet from the 150 feet height requirement for a radio / television tower.

Mr. Kazala testified that he is the General Manager for the Applicant; that the Applicant is replacing an existing tower which cannot meet the needs of current technology; that the existing tower has been in place for over twenty (20) years; that the proposed tower will be the same height as the existing tower; that the proposed tower will be located within forty (40) feet of the existing tower and will meet all setback requirements; that the proposed tower will service up to three (3) cell phone providers; that the current tower will be removed once the proposed tower is constructed

and all existing carriers using the tower are moved over to the new tower; that the proposed tower will meet all the requirements with the Federal Communications Commission ("FCC") and the Federal Aviation Administration ("FAA"); that the tower will be lit as required by law; that the height of the tower is standard for FM radio stations throughout the United States; that the Applicant is not seeking to go higher than the existing tower; and that the proposed tower will be sturdier and better able to handle newer technologies.

Mr. Wilk testified that the proposed and existing tower both meet the setback requirements; that the towers are at least one-hundred (100) feet from the property lines; and that the tower will accommodate two (2) additional carriers.

Mr. Kazala testified that Verizon currently uses the tower but they will offer to accommodate two (2) additional carriers.

Mr. Wilk testified that the proposed tower will be able to withstand 120 miles per hour winds making it a more sturdy structure than the existing tower; that the tower will be a steel tower with guy wires; and that the proposed tower is designed to collapse upon itself.

Mr. Kazala testified that there will be no increase in RF radiation; and that the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Mr. Wilk testified that single family residential properties are nearby; that there have been no previous complaints on the existing tower; and that the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Jody Vasey was sworn in and testified in opposition to the Application. She testified that she lives near the Property; that she was concerned how the proposed tower would change the appearance of the Property; and that she also feels the existing tower interferes with her television antenna.

In rebuttal, Mr. Kazala, testified that the proposed tower will be the same size, height, and width as the existing tower; that the guy wires supporting the tower will be enclosed with six (6) feet high fence; and that the Applicant is willing to meet with surrounding homeowners with antennas to install filters that will help prevent interference.

Ms. Vasey testified that she does not oppose the Application.

Mr. Kazala testified that the existing tower creates a unique situation; that the Applicant has not created the hardship; that the character of the neighborhood will not be affected since the tower has been in the area for many years; that the variance requested is the minimum variance necessary to afford relief; and that the variance requested represents the least modification of the regulation at issue.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11415 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the presence of the existing tower;
2. The Applicant seeks to replace the existing tower with a new tower;
3. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
4. The variance is necessary to enable reasonable use of the Property;
5. The difficulty was not created by the Applicant;
6. The variance will not alter the essential character of the neighborhood;
7. The variance sought is the minimum variance to afford relief; and
8. The variance represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11416 – Louis J. Travalini** – west of Road 347 (White’s Neck Road) 240 feet south of Road 349 (Old Mill Road). (911 Address: None Available) (Tax Map I.D. 1-34-8.00-420.00)

An application for a special use exception to place two (2) accessory structures for personal use on less than one (1) acre.

Mrs. Butler presented the case. Louis Travalini was sworn in and testified requesting a special use exception to place two (2) accessory structures for personal use on less than one (1) acre; that he was given the structures from the previous owner of Jim’s Hideaway; that the Property is zoned B-1; that the proposed structures will meet the required setback requirements; that he did not realize that the structures would not be permitted on the Property for personal use without a dwelling until he tried to obtain a building permit; that he chose not to use the Property for business reasons due to the costs and requirements that the Department of Transportation (“DelDOT”) would impose; that he plans to store his boat, vehicles, tractors, and other equipment in the buildings; that he and his family own the surrounding properties; that the adjacent properties have been designated to other family members and does not allow him to combine the lots to meet the acreage requirement for the proposed structures; that the structures are sitting on the Property, but no further work has taken place; that he moved the buildings prior to obtaining a building permit for the simple fact that a building permit was only required for the foundation of the structures; and that the Property was previously used as a horse pasture.

Mr. Sharp stated that the Application should have been advertised as both a variance and special use exception request.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the application be **re-advertised for August 18, 2014 Agenda**. Motion carried 5 – 0.

**Meeting Adjourned 8:14 p.m.**